



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: November 3, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Daniel Smith, Administrator, Agricultural Development Division

SUBJECT: ATCP 141-Cherry Marketing Order- Final Draft

PRESENTED BY: Stacie Ashby

REQUESTED ACTION:

At the November 19, 2014, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a final draft rule (copy attached) related to the Cherry Marketing Order. This rule changes the cherry marketing board from a 7 member board, with two districts each represented by 3 board members plus one at large member, to a 5 member board with all members elected at large.

SUMMARY:

Background

DATCP administers Wisconsin's agricultural marketing law which authorizes the creation of marketing orders for agricultural commodities. Each marketing order board collects assessments from producers of the applicable commodity. The assessments may be expended by the board for promotion, research or consumer education of the commodity. The provisions of Ch. 96, Stats., and Ch. ATCP 140 Wis. Adm. Code and the applicable marketing order (Chs. ATCP 141 to 148) govern the organization of each of the seven marketing order boards, the election of marketing board members, the assessment of producers and the use of assessments.

In recent years, the number of cherry growers has decreased so that currently there are 33 growers. The number of growers in each district has also changed. With the number of growers down to 33, it became difficult to consistently elect 7 members willing to serve on the Board. The Board requested the proposed amendment in order to have representation appropriate to the size of the industry. The Board also requested that the elections be at large rather than by district so that the representation would remain equitable regardless of changes to the location of producers.

In order to make any change to a marketing order, in addition to conducting the traditional rulemaking process, the change must be approved at a referendum of the producers of the affected commodity.

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Rule Content

This rule changes the cherry marketing board from a 7 member board with two districts each represented by 3 board members plus one at large member to a 5 member board with all members elected at large.

Public Hearings

DATCP held a public hearing on this rule on September 30, 2014, in Sturgeon Bay, and accepted written comments until October 14, 2014. The department did not receive any oral or written testimony.

Changes from Hearing Draft

The only changes DATCP made to the hearing draft are minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Fiscal Impact

This rule will not have a fiscal impact on state government or local government. A complete *fiscal estimate/economic impact analysis* is attached.

Business Impact

This rule will have no negative economic impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections. A complete regulatory flexibility analysis is attached.

Environmental Impact

This rule will not have any environmental impact.

Federal and Surrounding State Programs

Federal Programs

There is a federal marketing order for cherries under which assessments are collected in a manner similar to the state cherry marketing order. The state and federal marketing orders are operated cooperatively to effectively use the assessments for the benefit of cherry growers.

Surrounding State Programs

Michigan is the only one of the surrounding states that has a cherry marketing order.

Next Steps

If the Board approves this rule, DATCP will conduct a referendum of cherry growers to determine if there is approval of the proposed rule by the growers. If the growers approve the rule at referendum, DATCP will transmit that final draft rule to the Governor for his written approval and then to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 rule *to repeal* ch. ATCP 141.01 (5), 141.03 and 141.04 (1) (b); *to renumber and amend* 141.04
3 (1) (a) and to *amend* 141.04 (2) (a) and (d) *relating to* the composition of the cherry marketing
4 board.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This rule changes the cherry marketing board from a 7 member board, with two districts each represented by 3 board members plus one at large member, to a 5 member board with all members elected at large.

Statutes Interpreted

s. 96.10 (1), Stats.

Statutory Authority

ss. 93.07(1), and 96.15, Stats.

Explanation of Agency Authority

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has general authority to adopt rules interpreting statutes under its jurisdiction under s. 93.07(1), Stats. DATCP is specifically authorized to adopt rules under s. 96.15, Stats., to facilitate the administration and enforcement of Ch. 96, Stats (the Agricultural Marketing Act).

Related Rules or Statutes

Chapter ATCP 140 is the overarching rule applicable to each of the individual marketing orders. Chapters ATCP 141 through 148 are the marketing orders with ATCP 141 being the marketing order for cherries.

Plain Language Analysis

DATCP administers Wisconsin's agricultural marketing law which authorizes the creation of marketing orders for agricultural commodities. Each marketing order board collects assessments from producers of the applicable commodity. The assessments may be expended by the board for promotion, research or consumer education of the commodity. The provisions of Ch. 96, Stats., and Ch. ATCP 140 Wis. Adm. Code and the applicable marketing order (Chs. ATCP 141 to 148) govern the organization of each of the seven marketing order boards, the election of marketing board members, the assessment of producers and the use of assessments.

In recent years, the number of cherry growers has decreased so that currently there are 33 growers. The number of growers in each district has also changed. With the number of growers down to 33, it became difficult to consistently elect 7 members willing to serve on the Board. The Board requested the proposed amendment in order to have representation appropriate to the size of the industry. The Board also requested that the elections be at large rather than by district so that the representation would remain equitable regardless of changes to the location of producers.

In order to make any change to a marketing order, in addition to conducting the traditional rulemaking process, the change must be approved at a referendum of the producers of the affected commodity.

Rule Content

This rule changes the cherry marketing board from a 7 member board, with two districts each represented by 3 board members plus one at large member, to a 5 member board.

Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations

Federal Programs

There is a federal marketing order for cherries under which assessments are collected in a manner similar to the state cherry marketing order. The state and federal marketing orders are operated cooperatively to effectively use the assessments for the benefit of cherry growers.

Surrounding State Programs

Michigan is the only one of the surrounding states that has a cherry marketing order. There is a Cherry Marketing Committee in Michigan made up of between 5 and 13 committee members. The Michigan Marketing Committee has duties and powers that are very similar to the Wisconsin cherry Marketing Board.

Data and Analytical Methodologies

DATCP worked with representatives of the Wisconsin cherry industry to determine the changes proposed in this rule.

Analysis and Supporting Documents used to Determine Effect on Small Business

DATCP worked with representatives of the Wisconsin cherry industry determine the effect of the proposed rule on small businesses.

Effect on Small Business

This rule will have no direct impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections.

DATCP Contact

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Where and When comments May Be Submitted

Questions and comments related to this rule may be directed to:

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Madison, WI 53708-8911
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Comments must be received no later than two weeks after the administrative hearing DATCP will hold on this proposed rule. A date and location for the administrative hearing has yet to be

determined and will be published in the in the Wisconsin Administrative Register at least 10 days prior to the date of the hearing.

1 **SECTION 1.** ATPC 141.01 (5) and 141.03 are repealed.

2 **SECTION 2.** ATPC 141.04 (1) (a) is renumbered 141.04 (1) and amended to read:

3 ATPC 141.04 (1) A cherry marketing board consisting of 7 ~~5~~ affected producers, ~~3 from~~
4 ~~each district and one member at large~~, is established to administer this order. Board members
5 shall be elected producers. ~~Board member shall be affected producers in the district they are~~
6 ~~elected to represent. The board member at large shall be an affected producer from either district.~~
7 Board members shall be nominated and elected as prescribed in s. 96.10 (1), Stats. Notice of the
8 secretary's decision for issuance of this marketing order shall contain a call for nominations for
9 election of board members to initial terms of office. Nominations shall be filed not earlier than
10 58 days and not later than 75 days after the secretary's call for nominations, and the election held
11 within 60 days after approval of the marketing order by referendum. A call for nominations of
12 affected producers for subsequent election to an expired term of office on the marketing board
13 shall be made by the board not later than 60 days before the term of office expires. Elections to
14 fill expired terms of office shall be held within the 60-day period preceding expiration of the
15 terms of office. If no nominations are made by affected producers within the times specified, the
16 secretary or marketing board may extend the time period within which nominations may be filed.

17 **SECTION 3.** ATPC 141.04 (1) (b) is repealed.

18 **SECTION 4.** ATPC 141.04 (2) (a) and (d) are amended to read:

19 ATPC 141.04 (2) (a) The board is reconstituted as of the first election following (date
20 inserted by the Legislative Reference Bureau). For the initial terms of marketing board members
21 on the reconstituted board, the board member members receiving the highest and second highest

1 number of votes in each district shall hold office for a period of 3 years, the board member
2 members receiving the ~~second~~ third and fourth highest number of votes in each district and the
3 ~~board member at large~~ shall hold office for a period of 2 years, and the board member receiving
4 the lowest fifth highest number of votes in each district shall hold office for a period of one year.

5 (d) If a vacancy occurs for any reason, the marketing board shall appoint an affected
6 producer to serve the remainder of the term of office. ~~The successor shall be from the same~~
7 ~~district from which the vacancy occurs, except the successor to the member at large may be any~~
8 ~~affected producer.~~

9
10 **SECTION 5. EFFECTIVE DATE.** This rule takes effect on the first day of the
11 month following publication in the Wisconsin administrative register, as provided in s.
12 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Cherry Marketing Order
Adm. Code Reference: ATPC 141
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 14-R-06

Rule Summary

This rule changes the cherry marketing board from a 7 member board with two districts each represented by 3 board members plus one at large member to a 5 member board with all members elected at large.

Small Business Affected

This rule applies to cherry growers which are all small businesses. This rule will have no negative economic impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections and thus free up more assessment monies for cherry promotion, research and education benefiting cherry growers.

Reporting, Bookkeeping and other Procedures

The rule creates no reporting, bookkeeping or other procedures for small businesses.

Professional Skills Required

The proposed rule does not require profession skill of small businesses.

Accommodation for Small Business

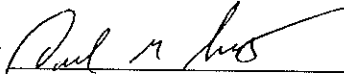
The rule has no negative impact upon small businesses and thus no accommodation is needed.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." This rule will not have any adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 9th day of July, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Daniel Smith, Administrator
Division of Agricultural Development

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 141, Cherry Marketing Order

Subject

Marketing Order program for Cherries

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG SEG-S

Chapter 20, Stats. Appropriations Affected

None

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect
☐ Indeterminate

☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☐ Increase Costs
☐ Could Absorb Within Agency's Budget
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☐ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

This rule changes the cherry marketing board from a 7 member board with two districts each represented by 3 board members plus one at large member to a 5 member board with all members elected at large.

DATCP administers Wisconsin's agricultural marketing law which authorizes the creation of marketing orders for agricultural commodities. Each marketing order board collects assessments from producers of the applicable commodity. The assessments may be expended by the board for promotion, research or consumer education of the commodity. The provisions of Ch. 96, Stats., and Ch. ATCP 140 Wis. Adm. Code and the applicable marketing order (Chs. ATCP 141 to 148) govern the organization of each of the seven marketing order boards, the election of marketing board members, the assessment of producers and the use of assessments.

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Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Local Governments

This rule will not impact local governments.

Cherry Growers

This rule will have no negative economic impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections and thus free up more assessment monies for cherry promotion, research and education benefiting cherry growers.

Utility Rate Payers

The rule will have no impact on utility rate payers.

General Public

This rule will have no effect on the general.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

This rule will benefit cherry growers by improving and making more equitable representation on the Cherry Marketing Board and by reducing the cost of cherry Board elections thereby freeing up more assessment monies for cherry promotion, research and education.

General Public

The general public will benefit from this rule as a result of continued growth of an important segment of the Wisconsin economy.

Alternatives

The alternative is to leave cherry board representation as is instead of making the representation that is more equitable and appropriate to the size of the industry.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit business, the general public, and the Wisconsin economy as improved representation and lower cost elections will promote growth of the cherry industry in Wisconsin.

Compare With Approaches Being Used by Federal Government

There is a federal marketing order for cherries under which assessments are collected in a manner similar to the state cranberry marketing order. The state and federal marketing orders are operated cooperatively to effectively use the assessments for the benefit of cranberry growers.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

There are very few cherry producers in the surrounding states and none of the surrounding states have a cranberry marketing order.

Comments Received in Response to Web Posting and DATCP Response

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.